

Appl. No. : **10/663,384**
Filed : **September 16, 2003**

AMENDMENTS TO THE DRAWINGS

The March 28, 2006 Office Action requested that Applicant submit corrected drawings to bring the drawings in compliance with 37 C.F.R. § 1.84(p)(4). In response, Applicant submits a "Replacement Sheet" illustrating Figure 2, which is attached hereto, wherein Applicant has amended the previous reference numeral "58" designating a data stream to now be reference numeral "57." Applicant has also deleted reference numerals 54a, 56a and 58a, which were not described in the Specification.

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REMARKS

The March 28, 2006 Office Action was based on pending Claims 1–12. By this Response, Applicant is amending Claims 1, 4, 7–9, 11 and 12. Claims 2, 3, 5, 6 and 10 remain as originally filed, and new Claims 13–20 have been added.

Thus, after entry of the foregoing amendments, Claims 1–20 are pending and presented for further consideration. In view of the foregoing amendments and the remarks set forth below, Applicant submits that Claims 1–20 are in condition for allowance.

SUMMARY OF OBJECTIONS AND REJECTIONS

The March 28, 2006 Office Action objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(4).

The Office Action objected to the Title of the Invention as stated in the Specification. The Office Action also objected to a typographical error in the published application.

Claims 4, 7 and 8 were objected to for claim informalities.

The Office Action rejected Claims 3, 4, 7 and 8 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Claim 9 was rejected under 35 U.S.C. § 112, second paragraph, for having insufficient antecedent basis and for indefiniteness.

The Office Action also rejected Claims 1–6 and 8–12 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,154,852 to Amundson et al. ("Amundson").

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Amundson in view of U.S. Patent Application Publication No. 2004-0210796 to Largman et al. ("Largman").

AMENDMENTS TO THE DRAWINGS

The March 28, 2006 Office Action objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(4). As discussed above, Applicant has amended Figure 2 to delete the reference numerals 54a, 56a and 58a not mentioned in the specification.

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Applicant has also changed the reference numeral "58" referring to the stream to read "57."

AMENDMENTS TO THE SPECIFICATION

Applicant has amended the first page of the Specification to recite the title as amended by the March 8, 2004 Preliminary Amendment. Applicant has also amended a portion of the Specification to correct a typographical error and to change a reference numeral to match a corresponding amendment to the drawings.

The Office Action also noted an error in Paragraph 0053 of Applicant's published application. In particular, the Office Action requested Applicant to amend "step S12" to read "step S112." Applicant notes, however, that the application as filed correctly reads "step S112," but the current typographical error was introduced by the United States Patent and Trademark Office during the publication of the application. Because the error appears to be non-material under M.P.E.P. § 1130, Applicant respectfully submits that correction of the error is not appropriate at this point in prosecution.

CLAIM INFORMALITIES

The Office Action objected to Claims 4, 7 and 8 for claim informalities. By the foregoing amendments, Applicant has amended Claims 4, 7 and 8 to address the Office Action's objections, and Applicant respectfully requests these objections to be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 3, 4, 7 and 8 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. In particular, the Office Action stated that Claim 3 recites "transferring from a first and second storage medium to a fourth storage medium" and that Claims 7 and 8 recite "transfer from the first and second portion of data directly from the third medium to a fourth storage medium." The Office Action further stated that these limitations were not supported by the Specification.

Applicant respectfully disagrees with this enablement rejection. The test for enablement requires a determination as to whether the disclosure as filed contains

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sufficient information to enable a skilled artisan to make and use the claimed invention without undue experimentation (see M.P.E.P. § 2164.01). Originally-filed claims may provide enabling disclosure even if such disclosure is not present in the specification portion of the application (see M.P.E.P. § 2164).

Claims 3, 4, 7 and 8 as previously pending were originally filed claims, and each of these claims concerns the transfer of data between storage media (e.g., from a first and second storage medium to a fourth storage medium). Furthermore, the specification and several other claims provide numerous details on the transfer of data between storage media (e.g., from a first and second storage medium to a third storage medium). Clearly, a skilled artisan would, in light of the originally filed disclosure, be able to make and use the invention of Claims 3, 4, 7 and 8 without undue experimentation. Applicant, therefore, respectfully requests that the 35 U.S.C. § 112 rejection of Claims 3, 4, 7 and 8 be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claim 9 was rejected under 35 U.S.C. § 112, second paragraph, for having insufficient antecedent basis and as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. In view of the foregoing, Applicant has amended Claim 9 to address the antecedent issue.

Although Applicant disagrees with the Office Action that Claim 9 was indefinite as originally filed, Applicant has amended Claim 9 to clarify that the third storage medium is connected to the first and second storage medium. Applicant notes that this amendment does not necessarily exclude an embodiment wherein the third storage medium is also connected to the media agent.

In view of the foregoing amendments and remarks, Applicant respectfully requests the 35 U.S.C. § 112 rejection of Claim 9 to be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)

The Office Action also rejected Claims 1–6 and 8–12 as being anticipated by Amundson. In view of the foregoing amendments and for at least the reasons set forth

below, Applicant respectfully disagrees and requests reconsideration of Claims 1–6 and 8–12.

Amended Independent Claim 1

Focusing on independent Claim 1, in one embodiment of Applicant's invention a method is disclosed for transferring data in a storage system. The method includes dividing a data source into a first and second portion of data and then transferring the first and second portions of data from the data source to a first and second storage medium using a first and a second data stream, respectively. The method further includes determining if the first and second portions of data can be combined and, if so, transferring the first and second portions of data from the first and second storage medium to a third storage medium using a third combined data stream.

Amundson does not disclose the method of independent Claim 1. Rather, Amundson appears to disclose methods and apparatus for data backup and recovery in a computer system. In particular, the Amundson system may back up data (136) on a plurality of tape drives (118) in a load balancing process. When the backed-up data is to be restored, a certain amount of the tapes drives (118) are selected to perform the recovery process to a direct access storage device (DASD) (116) (see, for example, col. 12, lines 13–34).

Amundson does not disclose, among other things, determining if first and second portions of data can be combined and, if so, transferring the first and second portions of data from a first and second storage medium to a third storage medium using a third combined data stream. Rather, because Amundson appears to only contemplate the recovery of stored data, Amundson does not appear to have any need to determine if streams of data from multiple storage devices are combinable when being transferred to another storage device.

Because Amundson does not disclose each element of amended independent Claim 1, Applicant asserts that Claim 1 is not anticipated by Amundson, and Applicant respectfully requests allowance of Claim 1.

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Amended Independent Claims 9, 11 and 12

Amended independent Claims 9, 11 and 12 are believed to be patentably distinguished over Amundson for reasons similar to those set forth with respect to the patentability of amended independent Claim 1 and for the different aspects recited therein.

Dependent Claims 2-6, 8 and 10

Claims 2-6 and 8 depend from amended independent Claim 1 and are believed to be patentably distinguished over Amundson for the reasons set forth above with respect to Claim 1 and for the additional features recited therein.

Claim 10 depends from amended independent Claim 9 and is believed to be patentably distinguished over Amundson for the reasons set forth above with respect to Claim 9 and for the additional features recited therein.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

The Office Action rejected Claim 7 as being unpatentable over Amundson in view of Largman.

Claims 7 depends from amended independent Claim 1 and is believed to be patentably distinguished over the cited art for the reasons set forth above with respect to amended Claim 1 and for the additional features recited therein. For example, neither Amundson, nor Largman, nor a combination thereof, teaches or suggests determining if first and second portions of data can be combined and, if so, transferring the first and second portions of data from the first and second storage medium to a third storage medium using a third combined data stream.

NEW CLAIMS 13-20

New Claims 13-20 have been added to more fully define Applicant's invention and are believed to be fully distinguished over the prior art of record.

REQUEST FOR TELEPHONE INTERVIEW

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the

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effect of the arguments presented above. Applicant's attorney can be reached at the general office number listed below.

CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain, the Examiner is cordially invited to contact the undersigned such that the issues may be promptly resolved.

Moreover, by the foregoing amendments and remarks no admission is made that any of the above-cited references are properly combinable. Rather, Applicant submits that even if the references are combined, the references still do not teach or suggest the claimed invention.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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